A

JOEY LOW KOK JOO

v.

AMG INSURANCE BHD

B

COURT OF APPEAL, PUTRAJAYA
MOHAMED APANDI ALI JCA
LINTON ALBERT JCA
MAH WENG KWAI J
[CIVIL APPEAL NO: 04-(IM)-35-01-2012]

C

18 SEPTEMBER 2012

CIVIL PROCEDURE: *Costs - Interest on costs - Judgment debt - Recovery action - Whether interest on costs pleaded - Whether interest can be given to fixed costs - Whether there is a difference between interest*

D

awarded on taxed costs and interest awarded on fixed costs - Whether costs awarded forms part of judgment debt - Whether appellant deprived from claiming interest

E

Arising from a motor vehicle accident, the appellant filed a claim in the Sessions Court and was awarded with both general and special damages together with interest and costs. The scale costs was fixed at RM5,040. Since the respondent failed to satisfy the judgment, the appellant filed a recovery action against the respondent and the Sessions Court granted judgment as prayed but refused to award interest on the costs of RM5,040 from the date of judgment to the date of satisfaction. On appeal, the High Court dismissed the appellant's appeal and thus, the appellant appealed to this court. The respondent argued, *inter alia*, that (i) the interest ought not to be given on fixed costs; and (ii) the appellant had not pleaded for interest on the costs. Among the issues that arose for consideration herein were, (i) whether the appellant was entitled to an award of interest on the costs of RM5,040 from the date of judgment; and (ii) whether an award of costs forms part of the judgment debt.

F

G

H

Held (allowing appeal with costs; setting aside order of High Court)

Per Mah Weng Kwai J delivering the judgment of the court:

I

(1) Both O. 29 r. 12 Subordinate Courts Rules 1980 and O. 42 r. 12 Rules of the High Court 1980 states about interest on a "judgment debt". The word "judgment" has been defined in

s. 2 of the Debtors Act 1957 to include "any decree, order or decision for the payment of money". An award of costs is an order for the payment of a sum of money and there is no reason why the payment should not be regarded as part of the judgment debt as well. The view to include costs as part of the judgment debt becomes more compelling when considering that the interest awarded on the principal sum is always regarded as part of the judgment debt. (para 4)

(2) There is no basis to distinguish between "interest awarded on taxed costs" and "interest awarded on fixed costs". It is trite that in taxed costs, the amount is ascertained after the bill of costs has been taxed by the taxing registrar at a subsequent date whereas in fixed costs, it is determined in accordance with the scale provided for in the Rules as soon as the draft order is drawn up. There, the difference ends and there is no basis to award interest on one "type" of costs and not in the other. (para 4)

(3) The rationale or purpose in awarding interest is to compensate a party for having been kept out of money which ought to have been paid to him timeously. In this case, the appellant was not paid the costs of RM5,040 by the respondent from the date of its award and it matters not whether the costs were quantified after taxation or were fixed costs according to scale. (para 4)

(4) The omission by the appellant for not having pleaded interest on the costs should not deprive the appellant of his interest. It is in the discretion of the court to grant interest and in any event, it was held in *Kerajaan Negeri Johor & Anor v. Adong Kuwan & Ors* that interest should be awarded on costs although not specifically claimed. (para 4)

[Interest awarded at the rate of 4% per annum on the costs of RM5,040 from the date of judgment to the date of full satisfaction.]

Bahasa Malaysia *Translation Of Headnotes*

Berbangkit daripada suatu kemalangan kenderaan bermotor, perayu telah memfailkan tuntutannya di Mahkamah Sesyen dan telah diawardkan dengan kedua-dua gantirugi am dan khas bersama-sama dengan faedah dan kos. Skala kos telah ditetapkan pada RM5,040. Memandangkan responden gagal untuk memuaskan penghakiman,

perayu telah memfailkan tindakan pengembalian terhadap responden dan Mahkamah Sesyen membenarkan penghakiman seperti dipohon tetapi enggan mengawardkan faedah ke atas kos RM5,040 daripada tarikh penghakiman sehingga tarikh penyelesaian. Atas rayuan, Mahkamah Tinggi menolak rayuan perayu dan oleh itu, perayu merayu ke mahkamah ini. Responden berhujah, antara lain, bahawa (i) faedah sepatutnya tidak boleh diberi untuk kos tetap; dan (ii) perayu tidak memplid faedah atas kos. Di antara isu yang dibangkitkan untuk pertimbangan di sini adalah, (i) sama ada perayu layak untuk menerima award bagi faedah atas kos RM5,040 dari tarikh penghakiman; dan (ii) sama ada kos sesuatu award membentuk sebahagian daripada hutang penghakiman.

Diputuskan (membenarkan rayuan dengan kos; mengenepikan perintah Mahkamah Tinggi)
Oleh Mah Weng Kwai H menyampaikan penghakiman mahkamah:

(1) Kedua-dua A. 29 k. 12 Kaedah-Kaedah Mahkamah Rendah 1980 dan A. 42 k. 12 Kaedah-Kaedah Mahkamah Tinggi 1980 menyentuh berkenaan faedah atas "hutang penghakiman". Perkataan "penghakiman" seperti ditakrifkan di bawah s. 2 Akta Penghutang 1957 merangkumi "sebarang dekri, perintah atau keputusan bagi pembayaran wang". Suatu award bagi kos adalah perintah untuk bayaran sejumlah wang dan tiada sebab kenapa bayaran itu tidak boleh dianggap sebagai sebahagian daripada hutang. Pandangan untuk merangkumi kos sebagai sebahagian daripada penghakiman menjadi lebih kukuh apabila mempertimbangkan bahawa faedah yang diaward terhadap jumlah prinsipal selalunya dianggap sebagai sebahagian daripada hutang penghakiman.

(2) Tiada asas untuk membezakan di antara "faedah yang diawardkan atas kos ditetapkan" dan "faedah yang diawardkan atas kos tetap". Adalah mantap bahawa dalam kos yang ditetapkan, jumlah ditentukan selepas bil kos telah ditaksirkan oleh pendaftar yang mentaksirinya pada tarikh yang ditetapkan manakala dalam kos tetap, ianya ditentukan mengikut skala yang disediakan di dalam Kaedah-Kaedah apabila deraf perintah disediakan. Di sana, perbezaan berakhir dan tiada asas untuk mengawardkan faedah berdasarkan satu "jenis" kos dan bukannya dalam satu lagi.

(3) Rasional atau tujuan dalam mengawardkan faedah adalah untuk memberi pampasan kepada suatu pihak kerana diketepikan daripada wang yang sepatutnya dibayar kepada beliau dalam masa yang telah ditetapkan. Dalam kes ini, perayu tidak dibayar dengan kos RM5,040 oleh responden dari tarikh award dan ianya tidak dihiraukan sama ada kos telah dijumlahkan selepas penetapan atau adalah kos tetap mengikut skala.

(4) Peninggalan perayu tanpa memplid faedah atas kos tidak boleh menghalang perayu daripada faedahnya. Ianya adalah budibicara mahkamah untuk membenarkan faedah dan dalam sebarang kejadian, ianya diputuskan dalam *Kerajaan Negeri Johor & Anor v. Adong Kuwan & Ors* bahawa faedah mestilah diawardkan atas kos walau pun tidak dituntut secara spesifik.

[Faedah diawardkan pada kadar 4% setahun atas kos RM5,040 dari tarikh penghakiman sehingga tarikh penyelesaian penuh].

Case(s) referred to:
Ab Lah Ali v. Yong Wah Sing [2003] 4 CLJ 228 HC ***(refd)***
Gooi Hock Seng v. Chuah Guat Khim [2001] 1 CLJ 583 SC ***(refd)***
Hunt v. RM Douglas (Roofing) Ltd [1988] 3 WLR 975 ***(refd)***
Kerajaan Negeri Johor & Anor v. Adong Kuwau & Ors [2002] 4 CLJ 259 ***(refd)*** *FC*
Liau Kim Lian v. Bajuria [1971] 1 LNS 63 FC ***(refd)***
Raja Abdullah Wahman Raja Sulaiman & Anor v. Toplink Technologies Sdn Bhd [2003] 5 CLJ 263 ***(refd)***

Legislation referred to:
Debtors Act 1957, s. 2
Rules of the High Court 1980, O. 42 r. 12
Subordinate Courts Rules 1980, O. 29 r. 12

Other source(s) referred to:
Halsbury's Laws of England, vol 37, p 581, para 753

For the appellant - Dato Rhina Bhar; M/s Rhina Bhar & Assocs
For the respondent - R Palaniappan; M/s Palani

Reported by Kumitha Abd Majid

JUDGMENT

Mah Weng Kwai J:

Facts

[1] On 14 July 2010, the Penang Sessions Court in a judgment in default awarded the appellant general and special damages arising from a motor vehicle accident claim, together with interest and costs. The scale costs was fixed at RM5,040.

[2] As the respondent, the insurers, failed to satisfy the judgment, the appellant filed a recovery action against the respondent and on 5 April 2011, the Penang Sessions Court granted judgment as prayed but refused to award interest on the costs of RM5,040 from the date of judgment to the date of satisfaction.

[3] Being dissatisfied with the decision of the Sessions Court Judge not to award interest on the costs, the appellant appealed to the High Court. The appeal was heard on 29 June 2011 and was dismissed with costs of RM1,000 to the respondent.

[4] No reasons have been given by the Sessions Court Judge or the High Court Judge for refusing to award interest on the costs.

Issue To Be Determined By The Court

[5] The sole issue in this appeal is whether the appellant is entitled to an award of interest on the costs of RM5,040 from the date of judgment (14 July 2010).

Decision Of The Court

[6] Upon reading the record of appeal and the written submissions and upon hearing counsel for the appellant and the respondent, the court is of the unanimous view that the appellant is entitled to an award of interest on the costs of RM5,040 at 4% per annum from the date of judgment (14 July 2010) to the date of satisfaction.

Grounds Of Decision

[7] In the recovery action, the appellant claimed for payment of the general and special damages together with interest and costs of RM5,040 and costs of the action. The appellant did not plead for payment of interest on the costs.

[8] Order 29 r. 12 of the Subordinate Courts Rules 1980 (SCR) provides that:

> Every judgment debt shall carry interest at the rate of 8 per centum per annum, or at such other rate not exceeding the rate aforesaid as the court shall direct unless the rate has been otherwise agreed upon between the parties such interest to be calculated from the date of judgment until the judgment is satisfied.

Similarly, there is provision in the Rules of the High Court (RHC) 1980 for every judgment debt to carry interest under O. 42 r. 12, which is *pari materia* with O. 29 r. 12 SCR, and which provides that:

> Every judgment debt shall carry interest at the rate of 8 per centum per annum, or at such other rate not exceeding the rate aforesaid as the court directs (unless the rate has been otherwise agreed upon between the parties), such interest to be calculated from the date of judgment until the judgment is satisfied.

[9] Order 29 r. 12 SCR and O. 42 r. 12 RHC both speak of interest on a "judgment debt". The issue then is whether an award of costs forms part of the judgment debt. The court is of the view that it does. The word "judgment" has been defined in s. 2 of the Debtors Act 1957 to include "any decree, order or decision for the payment of money". An award of costs is an order for the payment of a sum of money and there is no reason why the payment should not be regarded as part of the judgment debt as well. The view to include costs as part of the judgment debt becomes more compelling when considering that the interest awarded on the principal sum is always regarded as part of the judgment debt.

[10] There is a plethora of Malaysian cases that have decided that interest is payable on an award of taxed costs, starting from as early as 1971.

In the case of *Liau Kim Lian v. Bajuria* [1971] 1 LNS 63 Gill FJ delivering the judgment of the Federal Court held that "interest is payable where an order directs payment of costs to be taxed and that a judgment for costs to be taxed carries interest from the date of entry of judgment and not from the date of taxation".

[11] And in the Supreme Court case of *Gooi Hock Seng v. Chuah Guat Khim* [2001] 1 CLJ 583 Abdul Malek Ahmad FCJ similarly held that interest is payable on costs to be taxed.

[12] His Lordship Abdul Malek Ahmad FCJ in *Kerajaan Negeri Johor & Anor v. Adong Kuwau & Ors* [2002] 4 CLJ 259 FC reaffirmed his decision in *Gooi Hock Seng* and held that interest should be awarded on taxed costs. When doing so His Lordship referred to *Halsbury's Laws of England* vol. 37 p. 581 para. 753 which reads:

> Notwithstanding that orders for costs have the same effect as judgments and that judgment debts carry interest from the date of entering up the judgment, the modern practice, based on the principle that interest cannot run until payment is wrongfully withheld and that payment cannot be wrongfully withheld until a party knows what he has to pay, is that interest on costs runs from the date of the taxing officer's certificate quantifying the costs or from such other date as may be ordered as the date on which payment is to be made.

[13] In *Raja Abdullah Wahman Raja Sulaiman & Anor v. Toplink Technologies Sdn Bhd* [2003] 5 CLJ 263, Abdul Malik Ishak J (now JCA) applying the principle in *Gooi Hock Seng* and *Liau Kim Lian* allowed interest on taxed costs from the date of judgment rather than from the date when the taxation was completed.

[14] Last but not least, Low Hop Bing J (now JCA) in *Ab Lah Ali v. Yong Wah Sing* [2003] 4 CLJ 228 applied the incipitur rule enunciated in *Liau Kim Lian* and *Hunt v. RM Douglas (Roofing) Ltd* [1988] 3 WLR 975 and awarded interest on costs from the date of the entry of judgment to the date of realisation.

[15] No doubt the costs under consideration in all of the above mentioned cases were costs to be taxed and did not include fixed or scale costs. And this is probably the reason why counsel for the respondent had submitted that interest ought not to be given on fixed costs.

The court is of the view that there is really no basis to distinguish between "interest awarded on taxed costs" and "interest awarded on fixed costs". It is trite that in taxed costs, the amount is ascertained after the bill of costs has been taxed by the taxing registrar at a subsequent date whereas in fixed costs, it is

determined in accordance with the scale provided for in the rules as soon as the draft order is drawn up. There the difference ends and there is no basis to award interest on one "type" of costs and not in the other.

[16] The rationale or purpose in awarding interest is to compensate a party for having been kept out of money which ought to have been paid to him timeously. In this case the appellant was not paid the costs of RM5,040 by the respondent from the date of its award and it matters not whether the costs were quantified after taxation or were fixed costs according to scale.

[17] It was submitted by counsel for the respondent that in this case the appellant had not pleaded for interest on the costs. But the court is of the view that this omission should not deprive the appellant of his interest. It is in the discretion of the court to grant interest and in any event it was held by Abdul Malek Ahmad FCJ in *Kerajaan Negeri Johor & Anor v. Adong Kuwan & Ors (supra)* that interest should be awarded on costs although not specifically claimed.

[18] In the result, the appeal is allowed with costs and the order of the High Court is set aside. The appellant is awarded interest at the rate of 4% per annum on the costs of RM5,040 from 14 July 2010, the date of judgment till full satisfaction.